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February 1, 1995

VIA MESSENGER

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: CC Docket No. 92-77 (Billed Party Preference)

Dear Mr. Caton:

Gateway Technologies, Inc. ("Gateway"), a provider of collect calling services to correctional institutions, has participated actively in the captioned rulemaking, demonstrating both in its initial and reply comments that applying billed party preference ("BPP") to prisons and jails would create substantial security, fraud control and budget management problems in the specialized inmate services market.¹ In this letter, Gateway responds to some of the arguments raised by GTE Service Corp. ("GTE") and the Public Utility Law Project of New York ("PULP") in their recent *ex parte* submissions in this docket, which evidence a fundamental misunderstanding of how the inmate services market functions. These parties, among others, fail to recognize that inmate service rates are competitive and cost-based, and that applying BPP to correctional institutions would create massive *new* security and fraud problems, even apart from the adverse financial impact on correctional institutions and taxpayers that Gateway detailed in its comments.

Financial Impact on LECs

In its October 7, 1994 submission, GTE argued that BPP should be applied to correctional institutions because a "functional requirement for inmate exclusion" would require it to invest nearly \$17.5 million to upgrade end office and tandem switches so that the GTE LECs could segregate 0+ inmate traffic from other interLATA operator as-

¹ Comments of Gateway Technologies, Inc. on Further Notice of Proposed Rulemaking, CC Docket No. 92-77 (Aug. 1, 1994) ("Gateway Comments"); Reply Comments of Gateway Technologies, Inc. (Sept. 14, 1994) ("Gateway Reply Comments").

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William F. Caton

February 1, 1995

Page 2

sisted calls.² This argument is nonsensical. Under the current market structure, correctional facilities contract with inmate service providers like Gateway, who specialize in the equipment and service needs of this unique market. These carriers install sophisticated, technologically advanced customer premises equipment ("CPE") that routes all inmate-originated traffic to the their networks—blocking access to other OSPs and IXCs—on a 0+ collect call basis. In other words, in the inmate services market, the installed CPE *already* segregates inmate-originated traffic. Thus, excluding correctional institutions from BPP would not require LECs to affirmatively reconfigure their switching facilities, since LECs would continue to receive inmate service calls merely as access traffic (ordinary 1+ calls) designated for the presubscribed interexchange carrier. Indeed, as explained below, extending BPP to correctional institutions would impose substantial financial requirements for network modification on OSPs, rather than LECs, in order to replicate the anti-fraud protections now provided via CPE in the networks of *all* OSPs.³

Harm to Inmates and Families

In its *ex parte* letter, PULP continues to maintain that BPP will benefit inmates and their families by making communication more accessible and forcing inmate service rates down.⁴ In reality, if BPP is applied to correctional institutions, inmates and their families will suffer either a substantial reduction in inmate telephones or a substantial increase in inmate service rates. In either case, BPP would harm the very interest groups PULP purports to represent.

Under the present market structure, inmate service providers like Gateway provide customized CPE to correctional institutions at no charge, recovering their equipment costs through collect calling revenues realized as the designated interexchange carrier serving the institutions. If BPP is applied to inmate services, however, this market structure will be directly undermined. As Gateway has explained, "equipment providers would lose any incentive to continue their current practice of supplying specialized prison CPE without charge, because they would no longer be able to serve as the presubscribed '0+' carrier of all collect calls from the telephones." *Gateway Comments* at 13. Thus, by eliminating most or all interstate operator service revenues from firms like Gateway serving this market, BPP would force providers to remove their CPE from correctional institutions, or increase their 0+ surcharges to recover the substantial costs associated with the equipment, and in many cases both.

² Letter from F. Gordon Maxon, GTE, to William F. Caton, FCC, at 1 (October 7, 1994) ("GTE").

³ In any event, any financial impact on LECs would pale in comparison to the huge financial burden on state and local governments—a minimum of \$317 million—arising from the need to replace or fund correctional institution CPE that could no longer be financed by inmate service providers and installed free of charge at correctional institutions. See *Gateway Comments* at ii, 13-14.

⁴ Letter from B. Robert Piller, PULP, to William F. Caton, FCC, at 1 (October 7, 1994) ("PULP").

William F. Caton
February 1, 1995
Page 3

No party, including PULP, has contradicted this basic economic impact of BPP in the inmate services market. Of course, if BPP ultimately forces inmate service providers to withdraw their CPE, state and local governments (eventually taxpayers) will be saddled with the financial responsibility of replacing and funding the CPE. However, budget constraints and the political difficulties involved in spending tax revenues for so-called inmate "amenities," such as telephones, would seriously impair government's ability to maintain the current ratio of inmates to CPE. In other words, BPP would cause a substantial reduction in the number of telephones available to inmates, resulting in less frequent communication between inmates and their families. *Gateway Reply Comments* at 9-10, 15-17. Rather than benefiting inmates and their families with lower collect calling rates, as PULP predicts, BPP in reality would seriously injure the constituencies PULP is trying to protect.

There is little doubt that prison-specific CPE is crucial to providing inmates with telecommunication services. The fundamental benefit is that correctional facility CPE automatically limits all prisoner calls to a collect basis, virtually eliminating line-billing (either 1+ or third-party line) as a source of inmate fraud and nonpayment. In addition, correctional institution CPE also provides call detail reports, remote equipment polling, and number-specific blocking to avoid public safety dangers (911, fire and police stations, etc.) and to prevent billing fraud (976, 950, calling card "800" access, etc.) Indeed, advocates of extending BPP to correctional institutions, including Citizens United for Rehabilitation of Errants ("CURE"), typically concede that the "benefits" of BPP are directly linked to maintaining the security functions required at correctional institutions—for instance, call duration controls and blockage of potentially harassing calls to judges, victims, witnesses and the like—at the CPE level. *Gateway Comments* at 13. And as Gateway has previously demonstrated, "[t]he use of voice-response units, or 'automated' operator services, in lieu of 'live' operators provides a significant additional increase in both security and fraud protection, because inmates have a demonstrable ability to 'con' and harass human operators once a talk path to an operator services center is established." *Gateway Comments* at 6-7.

These types of security and fraud prevention measures, currently provided through correctional institution CPE, are critical in the inmate services market, which includes a large population of fraud artists and thieves. Yet several parties, including PULP, have suggested that security problems and fraud would not increase if BPP is extended to correctional institutions.⁵ To the contrary, it is clear that BPP would not only aggravate these problems, but could result in an explosion of telecommunications fraud by inmates. BPP would effectively destroy the ability of inmate providers to finance CPE, thus eliminating the existing security and fraud safeguards designed into the equipment. However, even if BPP has no impact whatsoever on correctional institution

⁵ *Id.* at 2.

William F. Caton

February 1, 1995

Page 4

CPE—an unlikely scenario—BPP would still make inmate fraud many times easier to commit and many times more expensive to combat.

From a technical standpoint, BPP would allow inmates easily to circumvent the fraud safeguards currently provided at the CPE level. In order to comply with BPP, correctional institutions would be required to alter their inmate telephones to enable inmates to bypass the default carrier and access *any* OSP, whether through 0+ access or access dialing codes such as 10XXX, 800 and 950. The fraud implications involved in unlimited inmate access to all OSPs are substantial, because few OSPs have the necessary fraud prevention mechanisms to identify and control inmate calls. As a result, inmates will in many if not most cases be able to access OSPs' calling card databases and live operator services, like any other non-inmate callers.

Calling card fraud is already a widespread problem in the telecommunications industry. Yet the "Grand Central Station" scenario of a fraud artist stealing calling card numbers as he looks through binoculars at callers dialing their card numbers would be insignificant compared with the massive potential of inmate calling card fraud. Numerous correctional facilities have advised the Commission that prisons and jails house a web of individuals highly skilled in the art of theft, with both the means and the incentive to exploit weaknesses in communications network security.⁶ As the American Jail Association reports, "[a]ll it will take is for a single inmate to find an unsuspecting carrier . . . that is ill-equipped and untrained to handle inmate calls" to cause "a major outbreak of telephone criminal activity from our jails" as the identity of that single carrier "becomes widely known" throughout the inmate population.⁷ Therefore, because BPP would route 0+ inmate calls to OSPs' calling card databases, *see Gateway Comments* at 18 n.35, it would expose correctional institutions and OSPs to a *huge* new potential area for inmate fraud that is currently prevented entirely by routing inmate calls to a single "default" carrier.⁸ In addition, even OSPs that provide automated calling card and operator services generally do not have the necessary network capability to identify and block inmate access to the OSPs' operator center. Thus, BPP would give inmates access to *live* operator services as well. Inmates could simply remain on the line, by-

⁶ *E.g.*, Comments of Washoe County Detention Facility, at 2 (Aug. 12, 1994) ("It is simply naive to profess the theory that there should be no more fraud and abusive phone calls from inmates than from the public in general."); Comments of Clarion County Prison, PA, at 1 (July 29, 1994); Comments of the Arizona Department of Corrections, at 3 (July 29, 1994) ("The fact that inmates continue to attempt to commit criminal acts, even though they are in prison, should not be a surprise to even the most gullible citizen."); Letter from James A. MacCaulley, Richland County Correctional Institution, to Hon. Reed E. Hundt, FCC, at 1 (July 28, 1994).

⁷ Letter from Stephen J. Ingle, AJA, to Hon. Reed E. Hundt, FCC, at 3 (July 26, 1994).

⁸ As Ameritech confirmed, inmate-originated calls "could easily be processed as calling card calls" by most OSPs because there is no unique prison line identifier in widespread use by LECs today, but rather a "generic alternate-billing-only" code that is associated with numerous applications other than correctional facilities. *Ameritech Comments* at 12-13.

William F. Caton
February 1, 1995
Page 5

passing the calling card database, and then either con or harass operators into completing their calls. Since most OSPs have to date not designed inmate fraud protections into their networks, BPP would thus allow inmate access to virtually all OSP calling card databases and live operator services.⁹

It appears that MCI is the only OSP to have implemented network controls to isolate correctional institution originating traffic and apply special anti-fraud restrictions to such calls. If BPP is made applicable to prisons and jails, every other OSP will be forced to make these same expensive and complicated network modifications. In fact, in order to fully protect against inmate fraud, OSPs must employ a panoply of several different network safeguards. First, the OSPs will have to take over, from the CPE, the function of segregating inmate from non-inmate calls by implementing software to screen traffic based on a LIDB or Flex-ANI line/class of service identifier (not yet available from all LECs and in many rural correctional institution locations). Second, OSPs will have to limit all inmate originating traffic to collect calls. Third, OSPs must block access to both their live operator services *and* calling card databases for all inmate-originated calls, installing automated collect calling software in their call processing switches. *See Gateway Comments* at 17. In other words, all OSPs—not just those currently serving the correctional institution market—will have to make an enormous investment to replicate at the network level the anti-fraud functions currently embedded in CPE that is provided at no cost to correctional institutions.

Of course, since most OSPs have chosen not to enter the correctional institution market, they have not needed to make investments of this type in specialized inmate fraud controls. Thus, because BPP would thrust all OSPs into inmate services, willingly or not—making all OSPs vulnerable to inmate telephone fraud—BPP would also require every OSP to invest in all of these network security measures. Smaller carriers with strained financial resources will plainly not be able to afford such massive network modifications, leaving them especially vulnerable to inmate abuse and financial failure. Consequently, although many smaller OSPs have chosen not to enter the inmate service market, applying BPP to correctional institutions would force them to provide communications services in a market in which they are neither interested nor prepared to handle.

Ironically, the costs associated with extending BPP to correctional institutions will not be borne by inmates and those parties (whether families, friends or whomever) paying for inmate collect calling services, but rather by all telephone users. Even if an OSP anticipates it will have only a minuscule share of inmate collect calls under BPP, it

⁹ For much these same reasons, Bell Atlantic noted that “[t]here are no technical advances that solve the problem that occurs when inmates have access to multiple networks and operators” (*Bell Atlantic Comments* at 17), and Ameritech concluded that inmate fraud and security features “cannot easily be implemented on the public switched network.” *Ameritech Comments* at 12-13.

William F. Caton
February 1, 1995
Page 6

will nonetheless be required to make the same expensive network modification as the largest OSPs or face potentially enormous bad debt and fraud liabilities. These costs will be spread among all OSP customers, whether or not they receive any calls from inmates. Accordingly, just as BPP would conflict with the Commission's long-established principle of cost causation for CPE expenses, *Gateway Reply Comments* at 17, it would also require that the costs of inmate services be imposed on millions of OSP ratepayers who are in no way related to the need for such expenses.

Rate Cap Issues

PULP also argues that as an alternative to BPP, a rate cap should be imposed on inmate service providers at *below* the dominant carrier's operator-assisted collect calling rates.¹⁰ Gateway has previously demonstrated that a rate cap is unnecessary in this competitive market, and will not repeat these arguments here. *E.g.*, *Gateway Comments* at 24-25. If a rate cap is ultimately adopted by the Commission, however, PULP's proposal is uneconomic and must be rejected.

While supporting a cap, PULP opposes the use of dominant carrier collect calling rates because they include an operator assistance surcharge. According to PULP, a rate cap at the calling card rate would be more equitable because "[a] rate cap which fails to take into account the unique cost structure faced by providers of telecommunications services to correctional institutions is unacceptable."¹¹ PULP is right as a matter of principle, but its financial reasoning is woefully deficient. Inmate service providers have significantly higher costs than those incurred for automated calling card services, fully justifying different rate terms for per-call surcharges and time-of-day discounts.

PULP's argument fails because it simply ignores the "unique cost structure faced" by carriers like Gateway. Inmate service providers incur unique costs in servicing this market which would not be recovered through calling card surcharges, set at \$0.80 in AT&T's interstate tariffs. These costs include, among other things, supplying and maintaining the unique CPE necessary in this market, operational expenses for configuring call blocking functions and inmate PINs, and increasing demands for new services, such as video services and improved inmate identification technologies. Even the major OSPs, like AT&T and MCI, recognize that a substantially higher operator service surcharge is necessary to recover these increased costs. AT&T and MCI both impose a \$3.00 operator assisted surcharge for their prison collect calls. AT&T Tariff FCC No. 1, § 3.2.19(c); MCI Tariff FCC No. 1, § C.3.02.0243 n.7. These inmate service surcharges are not only well in excess of the comparable surcharge for an automated calling card call, but also higher than the \$2.25 charge applied to operator-dialed collect interstate calls.

¹⁰ PULP at 2-3.

¹¹ PULP at 5.

William F. Caton
February 1, 1995
Page 7

Therefore, if an inmate services rate cap is necessary at all, it should include the \$3.00 inmate collect surcharge which the market has deemed appropriate.

On the other hand, per-minute prices for inmate services, like calling card services, generally reflect ordinary interstate MTS mileage-banded rates. Both AT&T and MCI incorporate their regular MTS rate schedules into their inmate collect call service tariffs. Smaller inmate services providers, including Gateway, generally use per-minute rate schedules that are comparable to AT&T's. *Gateway Comments* at 11 & n.44. Thus, there is essentially no difference between inmate services and other automated or operator-assisted OSP services in terms of mileage-banded per-minute rates.

The only appreciable differences between inmate service providers' rates and the dominant carrier's prison collect tariffed rates are in time-of-day and off-peak discounting. AT&T, with its concentrated daytime traffic volume, offers more significant discounts during its off-peak periods of nights and weekends. Smaller inmate service providers' traffic patterns, however, are considerably different than AT&T's. Typically, inmate service providers' peak periods are during nights and weekends, when inmate families are home. Indeed, approximately 70% of Gateway's network traffic is in time periods that are "off peak" for larger carriers which have more substantial daytime business customer usage. Therefore, because inmate service providers' networks must be configured to handle these peak times—and because as resellers they pay the same transport costs to their underlying carriers regardless of time period—they are economically unable to match the dominant carrier's discounting pattern.¹² Therefore, because inmate providers have higher costs for peak transport than AT&T, any inmate services rate cap should be based on *daytime* dominant carrier per-minute rates.

* * * * *

In sum, BPP would be a disservice to inmates and their families by causing a reduction in the telephones available to inmates, an increase in collect rates, or both. BPP would effectively eliminate the fraud protections currently provided through correctional institution CPE, thus exposing all OSPs to the serious threat of increased inmate telephone fraud and raising costs for all OSP customers as a result of the extraordinarily expensive network modifications BPP would necessitate. Finally, there is no justification for an inmate services rate cap—even assuming a rate cap were needed in this

¹² This inverted traffic pattern would clearly support a reversal of the traditional interstate rate structure for inmate services, with higher rates at night and weekends and lower rates during weekday day time periods. It is reflective of the vigorously competitive inmate services market, however, that to date most providers, including Gateway, include night and weekend per-minute discounts in their rate schedules for inmate collect services. Gateway, for instance, applies a 10% night/evening discount and a 20% weekend discount in its tariffed rates.

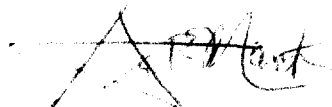
BLUMENFELD & COHEN

William F. Caton
February 1, 1995
Page 8

competitive marketplace—that is lower than the dominant carrier's tariffed prison collect surcharge and daytime per-minute rates.

Please do not hesitate to contact the undersigned counsel for Gateway if you have any questions or if we can supply additional information to the Commission in this rulemaking docket. In accordance with Section 1.1206(a) of the Commission's Rules, the original and one copy of this letter are enclosed for filing.

Sincerely,

A handwritten signature in dark ink, appearing to read "Glenn B. Manishin", written over a horizontal line.

Glenn B. Manishin
Elise P.W. Kiely

Attorneys for Gateway Technologies, Inc.

cc: Mark Nadel, Esq.
Policy & Program Planning Division
Room 504